IN RE JOSEPH ROWLANDS DEVADAS.

[Orig. Civ. Juris. (Willan, C.J.) September 3, 1949]
[K.L. — Petition for Admission No. 3 of 1949]

Advocates and Solicitors Ordinance, 1947 — Ss. 5(2), 5(4), 7(4) and 7(5) — Shortening of period — Grounds for.

Decision on what are the special grounds on which the Court may shorten or dispense with the period during which the notice referred to in S. 5(2) of the Advocates & Solicitors Ordinance, 1947, is required to remain posted.

Case referred to:—

(1) *In re Kim Chwee Chia* (1947) M.L.J. 108.

PETITION FOR ADMISSION.

K. K. Benjamin for the Petitioner.

W. G. W. Hastings for the Bar Council.

Ng Kok Thoy for Bar Committees.

Cur. Adv. Vult.

Willan, C. J.: — In this Petition the petitioner moved the Court under sub-section 5(5) of the Advocates and Solicitors Ordinance, 1947, to shorten the period during which the notice referred to in sub-section 5(2) is required to remain posted.

The facts are that the petitioner filed a previous Petition for Admission, No. 2 of 1948, on the 20th January, 1948. In that petition the date of posting of the last of the notices referred to in sub-section 5(2) was the 4th February, 1948. The proviso to sub-section 5(4) states that a petition lapses twelve months after the last date of posting, if within that period the petitioner has not applied to set his petition down for hearing.

In that Petition, No. 2 of 1948, the petitioner failed to fulfil the requirements of sub-section 7(1), and desired me to accord him an interview in accordance with sub-section 7(4). That interview took place on the 21st January, 1949, and on that date I made an order under that sub-section staying further proceedings on Petition No. 2 of 1948 up to and including the 30th June, 1949.

On the 24th January, 1949, the petitioner wrote to the Secretary of the Federation Bar Council asking whether in view of the fact that he was unable to set down his Petition No. 2 of 1948 for hearing, on account of the stay order made by me, such petition would lapse in view of the proviso to sub-section 5(4). On the 26th January, 1949, the Secretary of the Bar Council replied that he did not think sub-section 5(4) applied and that once the petitioner had complied with the requirements of sub-section 7(1), Petition No. 2 of 1948 could be restored under sub-section 7(5). In view of that reply the petitioner did not seek to take any further action regarding Petition No. 2 of 1948.

On the 25th March, 1949, the Secretary of the Bar Council again wrote to the petitioner stating that after further consideration he was not certain whether his opinion given in his letter of the 26th of January, 1949, was correct, and that it might be held that sub-section 7(5) was subject to the proviso to sub-section 5(4).

Upon receipt of that further letter the petitioner filed the present Petition, No. 3 of 1949, and the last of the notices referred to in sub-section 5(2) was posted, in this petition, on the 10th April, 1949. On the 29th July, 1949, the petitioner fulfilled the requirements of sub-section 7(1) and, as already stated, he now moves the Court to shorten the period during which the notices must remain posted in this present petition. The grounds in support of this motion, put forward by Mr. Benjamin on his behalf, are:—

(1) The object of posting notices under sub-section 5(2) is to give notice that a petitioner intends to apply to be admitted as an Advocate and Solicitor in case any person wishes to raise any objection, and that in this case more than adequate notice has been given in view of the fact that in Petition No. 2 of 1948 notices have remained posted with effect from the 4th February, 1948, that is for a period exceeding 18 months, three times the statutory period of six months prescribed by sub-section 5(2).

(2) That if it had not been for the advice contained in the letter he received from the Secretary of the Bar Council dated the 26th January, 1949, the petitioner would have filed Petition No. 3 of 1949 on the 4th of February, 1949 (the date on which Petition No. 2 of 1948 lapsed) or immediately thereafter, and consequently this motion to shorten the time would not have been necessary.

In so far as sub-section 5(5) of the Advocates and Solicitors Ordinance, 1947, relates to the shortening of the time during which the notice referred to in sub-section 5(2) is required to be posted, it reads:—

> The Court may, on the application and on special grounds, one of which may be that the petitioner has been engaged in any part of His Majesty's dominions in the active practice of his profession after having qualified as a Barrister of England or Northern Ireland (or of Ireland if called before the 1st day of October, 1921) or as a member of the Faculty of Advocates in Scotland or a solicitor of the Supreme Court of Judicature of England or Northern Ireland (or of Ireland admitted before the 1st day of October, 1921), or Writer to the Signet or a solicitor in Scotland or as an advocate and solicitor in the Colony, to be stated on affidavit or statutory declaration to be filed in Court seven clear days before the same is used, by order shorten the period during which the notice referred to in sub-section (2) of this section is required to be posted.....and may, if it thinks fit, admit and enrol the petitioner at any time.

I accept the first ground put forward by Mr. Benjamin as one of the two special grounds required by sub-section 5(5).

I held in *In re Kim Chwee Chia*[1] that there must be two special grounds before an order can be made under sub-section 5(5). In that case I stated:—

> In my view sub-section (5) of section 5 of the Ordinance, although it states that one of the special grounds may be that the petitioner has been engaged in any part of His Majesty's dominions in the active practice of his profession as a barrister of England etc., contemplates that, except in exceptional cases, the petitioner should have fulfilled that requirement as one of his special grounds.

Mr. Benjamin stated that the petitioner, who is a barrister of England, had not been engaged in the active practice of his profession after having been called, but he relied on the words "except in exceptional cases" in the passage set out from my judgment in the case of *In re Kim Chwee Chia*[1]. He urged this is an exceptional case for the reasons stated in his second ground.

Before deciding whether that is, or is not, a good special ground for shortening the time during which the notice required by sub-section 5(2) has to remain posted, I must deal with an important question argued in this matter regarding sub-sections 5(4), 7(4) and 7(5) of the Ordinance. They read:—

> 5(4) Subject to sub-section (5) hereof every petition shall be set down to be heard in open Court not less than six months after the date of the posting of the last of the notices referred to in sub-section (2):
>
> Provided that if the petitioner shall fail to set down his petition so that the same may be heard within twelve months from the said date, his application for admission and enrolment shall be deemed to have lapsed and no order shall be made upon the petition but such lapse shall be without prejudice to the right of the petitioner to make an application de novo for admission and enrolment.
>
> 7(4) On receiving the reports referred to in sub-section (3) of this section, the Chief Justice, after interviewing the petitioner if the petitioner desires to be heard, may, by order, stay further proceedings on the petition for such period as he may think fit.
>
> 7(5) At any time after the expiration of any period fixed by any order under sub-section (4) of this section, a petitioner may make further application under sub-section (2) and, if a favourable report is thereupon made under sub-section (1), may apply to restore his petition.

The question for decision is whether if, as in this case, the Chief Justice makes a stay order under sub-section 7(4) for a period which does not expire until after the expiration of the period of twelve months prescribed by the proviso to sub-section 5(4), the petitioner can apply successfully under sub-section 7(5) to restore his petition. If the answer is in the affirmative, the petitioner need not have filed Petition No. 3 of 1949, and there would have been no need for any application under sub-section 5(5) to shorten the time during which the notice referred to in sub-section 5(2) is required to be posted.

Mr. Benjamin submitted that the proviso to sub-section 5(4) has no application to the petitioner, because it can only apply to a petitioner who has fulfilled all the requirements of the Ordinance and who fails to set down his petition for hearing within the period of twelve months prescribed by that sub-section.

He further submitted that sub-section 7(5) is included in the Ordinance for the particular purpose of keeping alive a petition which has been stayed under sub-section 7(4) because the petitioner had not fulfilled the requirements of sub-section 7(1). He stressed the opening words of sub-section 7(5) — "At any time".

Questioned by me, he stated that the petitioner did not apply to be examined under sub-section 7(1) until the 4th of January, 1949, i.e. nearly twelve months after he filed his first Petition, No. 2 of 1948, and, after consulting the petitioner, could give no adequate reason why the petitioner had waited so long to make that application.

Mr. Hastings, who appeared for the Bar Council, informed me that the members of that Council are divided on this question and intimated that he was putting his own personal views before the Court.

He submitted that the word "fail" in the proviso to sub-section 5(4) only applies to a petitioner who is in a position to set down his petition for hearing and did not do so. In this case the stay order prevented the petition from being set down for hearing, and therefore the petitioner, himself, had not failed to set it down.

Mr. Hastings further submitted that immediately a stay order has been made the time prescribed by the proviso to sub-section 5(4) ceases to run and does not start to run again until the expiration of the stay order.

Mr. Ng Kok Thoy, who appeared for the Bar Committee of Selangor, Negri Sembilan and Kelantan, argued that the proviso to sub-section 5(4) does not state that the petition has lapsed but that it is only "deemed to have lapsed", and the word "deemed" is not imperative or mandatory but discretionary.

I am unable to accept any of these arguments. In my view there are no limitations on the word "fail" in the proviso to sub-section 5(4). A petitioner either sets down his petition for hearing, or he does not, irrespective of the reason for not doing so. If it were material to go into the reason why the petitioner failed to set down his Petition No. 2 of 1948, one would

point to the fact that such failure is his own fault in that he did not fulfil the requirements of sub-section 7(1) in that petition. It is no use attributing failure to the stay order — that order ensued because of the initial failure of the petitioner himself. To hold otherwise would mean that a petitioner who had fulfilled the requirements of sub-section 7(1) and then failed to set down his petition through inadvertence or illness, would be in worse position than the present petitioner who in Petition No. 2 of 1948 had not fulfilled the requirments of sub-section 7(1), because the former petitioner would have to start *de novo* and the latter would not.

Further, if the legislature had intended that sub-section 7(5) should be construed entirely independent of the proviso to sub-section 5(4), I should have expected sub-section 7(5) to commence with some such words as "Notwithstanding the provisions of the proviso to sub-section (4) of section 5...".

I am unable to accept the other argument put forward by Mr. Hastings, that immediately a stay order is made under sub-section 7(4) time ceases to run under the proviso to sub-section 5(4). To agree with that argument would be tantamount to placing the Chief Justice in a position in which he could override the maximum period prescribed by the legislature in the proviso to sub-section 5(4).

Accordingly I hold that Petition No. 2 of 1948 lapsed twelve months from the date of posting of th last of the notices referred to in sub-section 5(2) — i.e. twelve months from the 4th February, 1948.

I would point out that the petitioner is not left without a remedy. By the proviso to sub-section 5(4) he can bring another petition *de novo*, and in fact he has done so.

Having so decided I now return to the second ground urged by Mr. Benjamin for shortening the time under sub-section 5(5). I regret I am unable to accept it as a special ground under that sub-section. It has no connection with the petitioner being engaged in the active practice of his profession. Nor can I regard this as an exceptional case because it may easily happen that similar cases may arise.

I make no order on the Motion.

No Order.

IN THE ESTATE OF YEO SENG WHATT (Deceased)
CHUA IP NEO (w) v. TAN KEH NEO (w) & ANOR.

[Orig. Civil Juris. (Callow, J.) October 28, 1948]

[Malacca — Civil Suit No. 8 of 1946]

Chinese marriage — Secondary wife — Long continued cohabitation — Intention to form permanent union — Repute of marriage.

The question raised in this case was whether the plaintiff was the secondary wife of Yeo Seng Whatt (deceased). The evidence showed that the deceased had cohabited with the plaintiff and treated her as his wife from 1926 till his death. The plaintiff also attended and accompanied the funeral of the deceased.

Held, that although there were no sufficient proof of marriage by ceremony in this case, the plaintiff had substantiated her claim to be the secondary wife of the deceased by proof of (a) long continued cohabitation (b) intention to form a permanent union and (c) repute of marriage.

Cases referred to :—

(1) *Cheang Thye Phin v. Tan Ah Loy* (1920) A.C. 369.

(2) *Re Lee Choon Guan* (deceased) (1935) M.L.J. 78.

(3) *Tan Ah Bee v. Foo Koon Thye & another* (1947) M.L.J. 169.

(4) *In re the Will of Tay Geok Teat, Sunny Tay v. Seow See Neo and another* (1934) M.L.J 83.

(5) *The Six Widows' Case* 12 S.S.L.R. 128.

CIVIL SUIT.

Goh Tiow Wan for the Plaintiff.

M. Brash for the Defendants.

Cur. Adv. Vult.

Callow, J. : — The plaintiff claims :—

1. A declaration that the plaintiff is one of the widows of the deceased and as such she is entitled to share in the Estate of the deceased.
2. Administration of the real and personal estate of the deceased with all the necessary and proper accounts enquiries and directions.
3. An account of the administration of the deceased's estate by the defendants and payment to the plaintiff of the amount found due to her on taking such account.
4. Such further or other relief as the nature of the case shall require and
5. Costs.

Yeo Seng Whatt was at the date of his death the 2nd of January, 1942, an Assistant District Officer, stationed at Alor Gajah. He left a widow, the first defendant, and some family, among whom is the second defendant.